

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 184
PROPOSED COMMITTEE SUBSTITUTE H184-PCS40164-LG-3

Short Title: Change DCR Process for Unclaimed Property.-AB

(Public)

Sponsors:

Referred to:

March 11, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE DEPARTMENT OF CULTURAL RESOURCES, OFFICE OF ARCHIVES AND HISTORY, TO USE THE NET PROCEEDS OF THE SALE OF ARTIFACTS FOR MAINTENANCE OR CONSERVATION OF OTHER ARTIFACTS; TO CLARIFY THE PROCESS FOR TRANSFERRING TITLE OF UNCLAIMED OR UNDOCUMENTED PROPERTY LOANED TO MUSEUMS AND HISTORICAL REPOSITORIES TO THOSE MUSEUMS AND HISTORICAL REPOSITORIES; AND TO SET A TIME LIMITATION ON CONFIDENTIALITY OF RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-7 reads as rewritten:

"§ 121-7. **Historical museums.**

(a) The Department of Cultural Resources shall maintain and administer State historic ~~attractions sites and museums~~ under the management of the Office of Archives and History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history or specialized regional history museums may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

The Department of Cultural Resources may, with the explicit approval of the North Carolina Historical Commission sell, trade, or place on ~~permanent~~ loan any artifact owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History, unless the sale, trade, or loan would be contrary to the terms of acquisition. The net proceeds of any sale, after deduction of the expenses attributable to that sale, shall be deposited ~~to the State treasury to the credit of~~ in the Office of Archives and History Artifact Fund to the credit of the museum or archives that had custody of the artifact sold, and shall be used only for the ~~purchase expenses associated with the purchase, maintenance, or conservation~~ of other artifacts. No artifact curated by any agency of the Department of Cultural Resources may be pledged or mortgaged.

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1 (e) Title to an artifact whose ownership is unknown or whose owner cannot be located
2 passes to the Department of Cultural Resources if:

- 3 (1) The artifact was placed on loan with the Office of Archives and History for a
4 period of time exceeding five years or for an indefinite period of time or the
5 artifact's status with the Office of Archives and History as a loan, gift,
6 purchase, or other arrangement is unknown; and
7 (2) The artifact has been a part of the inventory of the Office of Archives and
8 History for more than five years; and
9 (3) The Department of Cultural Resources makes a reasonable effort, including
10 a diligent search of its own records, to locate and inform the owner, his heirs
11 or successors, that the Office of Archives and History is holding the artifact
12 and to clarify the artifact's status with that Office.

13 To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources
14 shall mail, first class postage prepaid, a notice to the last known address of the owner of the
15 artifact or the last known address of the owner's heirs or successors. The Department need not
16 mail a notice, if after exercising due diligence to find a record within the Department of
17 Cultural Resources indicating the owner of the artifact and his latest address, that information is
18 not available. If no claim is made within 90 days from the date that notice is mailed, the
19 Department of Cultural Resources shall publish a notice in three papers of general circulation
20 once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is
21 submitted to the Department of Cultural Resources, the Department may determine that legal
22 title to the artifact is vested in the Office of Archives and History.

23 (d) Any person claiming legal title to an artifact to which the North Carolina Office of
24 Archives and History also claims title as provided by subsection (e) may file a claim with the
25 Department of Cultural Resources on a form prescribed by the Department. If the claimant is
26 not the owner from whom the Department originally obtained the artifact, the claimant shall
27 state in addition to any other information required by the Department, the facts surrounding the
28 unavailability of the person who originally loaned or bestowed the property to the Office of
29 Archives and History and the basis for the claim to title of the artifact. If the Department of
30 Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of
31 the artifact, the Department shall return the artifact to the owner. If the Department determines
32 that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the
33 determination as provided by Chapter 150B."

34 **SECTION 2.** Chapter 121 of the General Statutes is amended by adding a new
35 Article to read:

36 "Article 5.

37 "Museum and Archives Repository Property.

38 "**§ 121-50. Legislative findings and declaration.**

39 The General Assembly finds and declares that the growth and maintenance of collections in
40 museums and archives repositories, both public and private, is a matter of general public
41 interest to the citizens of North Carolina. Museums and archives repositories of all kinds
42 depend upon loans of various articles of property to promote and encourage the teaching of
43 North Carolina and local history and to preserve and care for historical manuscripts, materials,
44 and artifacts. The uncertainty regarding title to and responsibility for loaned property is a
45 hindrance to museums and archives repositories in their efforts to maintain, repair, and dispose
46 of property in their possession. The purpose of this Article is to terminate stale claims and to
47 fairly and reasonably allocate responsibilities for the determination of title and financial
48 responsibilities in certain cases.

49 "**§ 121-51. Definitions.**

50 The following definitions apply in this Article:

- 1 (1) Address. – A description of the location of the lender as shown on a museum
2 or archives repository's records that is sufficient for delivery by mail.
- 3 (2) Archives repository. – A nonprofit organization or a public agency that is
4 open to the public on a regular basis and whose primary functions include
5 selecting, preserving, and making available records of historical or enduring
6 value. As used in this Article, the term "archives repository" includes
7 libraries.
- 8 (3) Loan. – The placement of property with a museum or archives repository
9 that is not accompanied by a transfer of title of the property to the museum
10 or archives repository and for which there is some record that the owner
11 intended to retain title to the property. The term "loan" does not include
12 transfers between museums, between archives repositories, or between
13 museums and archives repositories unless the transferring institution
14 specifically provides in writing that the transfer is a loan under this Article.
- 15 (4) Museum. – A nonprofit organization or a public agency that is open to the
16 public on a regular basis and is operated primarily for the purpose of
17 collecting, cataloging, preserving, or exhibiting property of educational,
18 scientific, historic, cultural, or aesthetic interest. As used in this Article, the
19 term "museum" includes historical societies and historic sites.
- 20 (5) Property. – A tangible object under the care of a museum or archives
21 repository that has intrinsic historic, artistic, scientific, educational, or
22 cultural value.
- 23 (6) Valid claim. – A written notice of intent to preserve an interest in property
24 on loan to a museum or archives repository, including:
- 25 a. A description of the property adequate to enable the museum or
26 archives repository to identify the property.
- 27 b. Documentation sufficient to establish the claimant as owner of the
28 property.
- 29 c. A statement attesting to the truth, to the best of the signer's
30 knowledge, of all information included in or with the notice.
- 31 d. The signature, under penalty of perjury, of the claimant or a person
32 authorized to act on behalf of the claimant.

33 **§ 121-52. Acquisition of title to loaned property.**

34 (a) A museum or archives repository may acquire the title to documented property
35 loaned to the museum or archives repository if (i) the term of the loan has expired and at least
36 seven years have passed without written or other contact between the lender and the museum or
37 archives repository or (ii) the term of the loan does not have an expiration date but at least
38 seven years have passed without written or other contact between the lender and the museum or
39 archives repository since the loan was made.

40 (b) To acquire title to property under this section, the museum or archives repository
41 shall first send a notice by certified mail to the lender's last known address. The notice must
42 include all of the following:

- 43 (1) The lender's name and last known address.
- 44 (2) A brief and general description of the property.
- 45 (3) A statement that the term of the loan has been terminated.
- 46 (4) The date or approximate date, if known, when the owner loaned the property
47 to the museum or archives repository.
- 48 (5) The name, address, and telephone number of the museum or archives
49 repository representative to contact for more information or to claim
50 ownership.

- 1 (6) A statement that outlines the schedule and requirements for the museum or
2 archives repository to acquire title under this section.
- 3 (c) If a valid claim to the property is not received by the museum or archives repository
4 within 30 days from the date the notice was mailed, the museum or archives repository shall do
5 the following:
- 6 (1) If the museum or archives repository knows the last known address of the
7 lender, publish a notice:
- 8 a. At least once a week for two consecutive weeks in a newspaper of
9 general circulation in either (i) the county in this State where the
10 lender's last known address is located or (ii) the county, borough, or
11 other geographical organizational entity of the jurisdiction in which
12 the lender's last known address is located in another state.
- 13 b. At least 30 consecutive days on the museum or archives repository's
14 official Internet Web site.
- 15 (2) If the museum or archives repository does not have an address for the lender,
16 publish a notice at least once a week for two consecutive weeks in a
17 newspaper of general circulation in the county where the museum or
18 archives repository is located.
- 19 (3) Include in the notice required by subdivisions (1) and (2) of this subsection
20 all of the following:
- 21 a. The information required for the notice under subdivisions (1)
22 through (5) of subsection (b) of this section.
- 23 b. The date of the last publication of the notice under this subsection.
- 24 c. A statement that the museum or archives repository will acquire title
25 to the loaned property if a valid claim to the property is not received
26 by the museum or archives repository within 45 days from the date of
27 the last publication of the notice under this subsection.
- 28 (d) If the requirements of subsections (a) through (c) of this section are satisfied and if a
29 valid claim to the loaned property is received by the museum or archives repository within 45
30 days after the date of the last publication of the notice required by subsection (c) of this section,
31 the Department of Cultural Resources shall have 45 days to determine whether the claim is
32 valid and that the claimant is the legal owner of the artifact. If the Department determines that
33 the claim is valid and that the claimant is the legal owner of the artifact, the Department shall
34 return the artifact to the owner at the owner's expense.
- 35 (e) If the requirements of subsections (a) through (c) of this section are satisfied and if a
36 valid claim to the loaned property is not received by the museum or archives repository within
37 45 days after the date of the last publication of the notice required by subsection (c) of this
38 section, the museum or archives repository acquires the title to the property on the 46th day
39 after the date of the last publication of the notice under subsection (c) of this section. Upon
40 acquiring title, the museum or archives repository shall own the property free and clear from all
41 claims of ownership.
- 42 **"§ 121-53. Disputed ownership.**
- 43 (a) If the Department determines that the claim of ownership is not valid and rejects the
44 claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B of
45 the General Statutes. The burden shall be on the claimant to prove that the claimant is the legal
46 owner of the property.
- 47 (b) Nothing in this Article shall be construed to convert a loan into a bailment. All
48 equitable and legal defenses shall be available to museums and archives repositories in the
49 event of a dispute over ownership.
- 50 (c) In cases of disputed ownership of loaned property, a museum or archives repository
51 may maintain possession of loaned property during the dispute and shall not be held liable for

1 its refusal to surrender loaned property in its possession except in reliance upon a court order or
2 judgment.

3 **"§ 121-54. Responsibilities of owners of loaned property; representation of ownership.**

4 (a) Lender's Responsibilities. – In all cases, it shall be the responsibility of the owner of
5 loaned property to notify the museum or archives repository in writing of the owner's identity
6 and current address. It shall be the responsibility of any new owner acquiring loaned property
7 to notify the museum or archives repository within 60 days of his or her name and address. Any
8 owner of loaned property shall, upon request from a museum or archives repository holding
9 loaned property, promptly provide evidence of ownership satisfactory to the museum or
10 archives repository. This section shall apply to all changes in ownership, whether by sale, gift,
11 devise, operation of law, or any other means. So long as a museum or archives repository deals
12 honestly and in good faith, no museum or archives repository shall be prejudiced by reason of
13 any failure to deal with the true owner of any loaned property if the owner has failed to comply
14 with the requirements of this section.

15 (b) Representation of Ownership. – A museum or archives repository shall not be liable
16 for actions taken in reasonable reliance upon the representations of the person who first
17 transfers an item of property to the museum or archives repository that the transferee is the true
18 owner of the loaned property.

19 **"§ 121-55. Museum or archives repository's lien for expenses.**

20 (a) When the lender of loaned property is known, a museum or archives repository may
21 charge the lender expenses for the reasonable care of loaned property unclaimed after the
22 expiration date of the loan.

23 (b) When the lender of loaned property is unknown, a museum or archives repository
24 may place a lien against the value of specific loaned property for expenses reasonably
25 necessary to protect the loaned property from ordinary decay and deterioration due to natural
26 causes, theft, or vandalism.

27 **"§ 121-56. Acquisition of undocumented property.**

28 (a) Property in the possession of a museum or archives repository which the museum or
29 archives repository has reason to believe may be on loan and for which the museum or archives
30 repository does not know the owner or have any reasonable means of determining the owner
31 becomes the property of the museum or archives repository if no person has claimed the
32 property within seven years after the museum or archives repository or a predecessor or
33 assignor of the museum or archives repository took possession of the property. After following
34 the notification process set out in G.S. 121-52, the museum or archives repository shall become
35 the owner of the property on the day after the seven-year period ends and shall be free and clear
36 from all claims of ownership.

37 (b) The requirements of G.S. 121-52 and G.S. 121-53 shall apply to valid and disputed
38 claims of ownership to undocumented property.

39 **"§ 121-57. Exclusivity of provisions.**

40 The provisions of this Article shall control the procedure and disposition of any property to
41 which it applies in lieu of any other procedure prescribed by law."

42 **SECTION 3.** Chapter 132 of the General Statutes is amended by adding a new
43 section to read:

44 **"§ 132-11. Time limitation on confidentiality of records.**

45 (a) Notwithstanding any other provision of law, all restrictions on access to public
46 records shall expire 100 years after the creation of the record.

47 (b) Subsection (a) of this section shall apply to any public record in existence at the
48 time of, or created after, the effective date of this section.

49 (c) No provision of this section shall be construed to authorize or require the opening of
50 any record that:

- 1 (1) Is ordered to be sealed by any state or federal court, except as provided by
- 2 that court;
- 3 (2) Is prohibited from being disclosed under federal law, rule, or regulation;
- 4 (3) Contains federal social security numbers;
- 5 (4) Is a juvenile, probationer, parolee, post releasee, or prison inmate record
- 6 including medical and mental health records; or
- 7 (5) Contains detailed plans and drawings of public buildings and infrastructure
- 8 facilities.
- 9 (d) For purposes of this section, the custodian of the record shall be the Department of
- 10 Cultural Resources or other agency in actual possession of the record."
- 11 **SECTION 4.** This act is effective when it becomes law.